

Minutes of the State Board of Health April 13, 2005

The Washington State Board of Health (SBOH) met at the Comfort Inn of Tumwater in Tumwater, Washington. Tom Locke, WSBOH Chair, called the public meeting to order at 9:09 a.m. and addressed the attendees with the following statement:

“This is a public meeting of the State Board of Health held under provisions of RCW 43.20. Notice of the meeting was provided in accordance with provisions of RCW 34.05, the Administrative Procedures Act. Those members having any conflict of interest on any item coming before the Board will report that conflict with respect to the particular subject under consideration. In case of challenge of any Board members by the public, the Board shall decide the status of the challenged members to participate before considering the substance of the matter.

Copies of all materials supplied to the Board for today’s meeting have been available since close of business last Friday from the Board’s Tumwater office and on the Board’s Web site at www.sboh.wa.gov. They are also available today, along with anything else we have received since, at the table in the back of the room. To conserve public funds, we have only made as many copies as we feel will be needed, so we may run out of some particularly popular items. If you do not find a document you need, please ask Desiree Robinson, WSBOH Executive Assistant, or another Board staff person for one.

Our meeting today is open to the public, so please feel free to listen in on informal discussions involving Board members or staff, including any that may occur during breaks or lunch.”

SBOH members present:

Thomas H. Locke, MD, MPH, Chair
Carl Osaki, RS, MSPH, Vice Chair
Ed Gray, MD
Mel Tonasket

Keith Higman
Mary Selecky (Bill White for late morning)
The Honorable David Crump, PhD
The Honorable Mike Shelton

SBOH members absent:

Frankie Manning, MN, RN
Charles Chu, DPM

State Board of Health Staff present:

Craig McLaughlin, Executive Director
Desiree Robinson, Executive Assistant
Bobbi Berry, Assistant to the Board

Lonnie Peterson, Public Information Officer
Tara Wolff, Health Policy Analyst
Ned Therien, Health Policy Analyst

Guests and Other Participants:

John Stormon, Department of Ecology
Mike Glass, Department of Health
Catie Beattie, Department of Health
John Peppert, Department of Health
Jack Jourden, Department of Health
Ron Morris, Washington State Medical Association
Tracy Mikesell, Department of Health
Jennifer Shaw, ACLU
Thomas Hooten, GACHA/Harborview
Sally Clark, Lifelong AIDS Alliance

Diana T. Yu, Thurston County Public Health
Kelly Scott, Citizen
Ward Hinds, WSALPHO/AIDSnets
Leslie Rivera, Benton-Franklin Health District
Melissa Baughman, Benton-Franklin Health District
Frank Merriwether, Department of Health
Kim Overstreet, Wyeth Vaccines
Kathy Blodgett, DSHS
Sofia Aragon, Department of Health

WELCOME NEW BOARD MEMBER

Chair Locke introduced The Honorable Mike Shelton, Commissioner of Island County, as the Board’s newest member. Member Shelton will represent elected county officials.

APPROVAL OF AGENDA

Motion: Approve April 13, 2005 agenda

Motion/Second: Crump/Osaki

Approved unanimously

ADOPTION OF MARCH 9, 2005 MEETING MINUTES

Motion: Approve the March 9, 2005 minutes

Motion/Second: Crump/Higman

Approved unanimously

SBOH ANNOUNCEMENTS AND OTHER BUSINESS

Craig McLaughlin, WSBOH Executive Director, noted that Frankie Manning, WSBOH Member, continues to be absent because the Veterans Administration has temporarily posted her to Texas. He asked Board members to think about activities that they would like to highlight at the Joint Conference on Health in Yakima in October 2005. He mentioned that the CDC had a meeting in Seattle on March 24 to discuss its research agenda, and that the University of Washington Health Policy Analysis Program has invited Board members and staff to help plan for the Washington Legislative Conference on December 6, 2005. The Board meeting for December has been rescheduled to December 7 to correspond with the Legislative Conference.

There is funding in the Governor's budget for protecting marine waters, especially Hood Canal. Funds include some support for local health jurisdictions to deal with onsite planning. Executive Order 05-03 issued by the Governor requires agencies to use plain language, especially in rules. Legislators have requested that the Board consider a rule revision on training requirements for food handlers to include information about food allergies. Staff is preparing a CR-101 for a rule revision. The Legislature has been considering bills regarding livestock waste management and dead animal disposal. Staff is preparing a CR-101 to revise Board rules to be more consistent with requirements in statutes and rules administered by other state agencies. The CR-103 has been filed to require varicella immunization for entry into schools and child care centers. Mr. McLaughlin said that he expected the onsite rule revision (continued from the March 2005 Board meeting) will require significant rule modification and a supplemental CR-102. This will result in a need for a new timeline. Mr. McLaughlin suggested the July meeting for a new hearing before there is turnover in Board membership. The most controversial issues are related to the west side of the state. Therefore, he suggested that the location for the July meeting be changed from Benton County to Tumwater.

Mr. McLaughlin noted that the Legislature was considering a bill to codify a memorandum of understanding (MOU) regarding cruise ship wastewater discharges. Mary Selecky, Secretary of Health and WSBOH Member, commented about the MOU and Department of Health (DOH) concerns with potential contamination of shellfish beds. DOH has raised these issues with the Department of Ecology, the United States Food and Drug Administration, and the Legislature. DOH staff could provide a report to the Board at the May meeting.

Mr. McLaughlin reported that DOH is working on a handbook for implementing the transient accommodations (TA) rules, which should help solve some industry concerns. He mentioned his response to a letter from a hotel builder in Elma and his working with DOH staff to address the builder's concerns. The issue involved vesting of a building permit, which was approved before the recent TA rule revision.

Mr. McLaughlin said that the Environmental Protection Agency (EPA) is working on federal methamphetamine lab cleanup guidelines. The Honorable David Crump, WSBOH Member, asked for clarification on what federal guidelines might mean for Washington. Secretary Selecky said that Washington State has been a national leader in dealing with the meth cleanup problem and that new EPA guidelines may reflect some of the work already done in this state.

DEPARTMENT OF HEALTH UPDATE

Secretary Selecky said she was very pleased that Member Shelton has joined the Board. She told of past good working relationships and his longstanding support of public health. Secretary Selecky commented that her reappointment as Secretary of Health was a big honor. This is a policy-forming time for the new administration, a time to set the tone for the coming years. Examples of priorities include patient safety (taking action on professional licenses when needed); lowering tobacco use by kids (multi-prong approach); shoring up public health infrastructure; working with the Washington State Patrol on emergency preparedness; and investing in education, health care (quality, cost, access to improve health status), and economic development (while protecting the environment). The state's relationship with local government requires providing resources.

Today's press headlines mentioned a recall on influenza virus samples distributed to diagnostic laboratories to test analytic capability. The samples contained an unusually virulent strain that should not have been released to the clinical laboratories. She discussed some of the possible implications of the University of Washington receiving federal funds to research agents that might be used for bioterrorism. Secretary Selecky acknowledged Michelle Davis, Rules Coordinator, Department of Health, and mentioned that Ms. Davis will be taking on a larger role coordinating rule development between DOH and the Board.

DOH has four of six bills still active in the Legislature: (1) hospital survey frequency on an average of every 18 months (coordinated with Joint Committee surveys), (2) malpractice insurance assistance for voluntary retired providers in rural areas, (3) greater DOH grant authority, and (4) requirements for hospitals to report to DOH when the hospital restricts access by certain professionals. Secretary Selecky described some differences in proposed budgets. Governor Locke's budget was friendly to DOH (for example, TB testing). Governor Gregoire's budget is also good for public health. Budget proposals in the Legislature are still uncertain, but look good for public health. Member Crump asked what the Governor's policies mean for local boards of health. Secretary Selecky said the Governor has reaffirmed the need for active working relationships with local health jurisdictions. She said that DOH has a senior manager focused on local health issues.

Ed Gray, WSBOH Member, asked how Joint Commission survey changes might affect DOH hospital surveys. Secretary Selecky said that DOH looks at the Joint Commission process but uses its own survey process based on patient-outcomes. DOH is flexible regarding complementing the survey activities of the Joint Commission and avoiding duplication. Member Gray also asked how DOH was using the national data bank on health professional disciplinary actions. Secretary Selecky said DOH uses the national data bank when possible; however, there is a lag time for getting information from the national data bank. Secretary Selecky also noted that DOH will be required to participate on many new committees established by the Legislature to look at health-related issues.

BOARD MEMBER COMMENTS AND CONCERNS

Mel Tonasket, WSBOH Member, said he would be excusing himself after lunch for a meeting with the Governor. He reported that it was his honor to attend Secretary Selecky's reappointment hearing and said he presented Member Gray's comments on behalf of the Board.

Member Gray commented about the CDC's information regarding the 2005-06 influenza immunization program. He is concerned that last year's mistakes will be repeated. He expressed concern about the CDC's guidelines for vaccine administration. The CDC prioritizes vaccine use based on the treatment of individual people, rather than public health protection. Member Gray also noted that the UW Medical School has been recognized as the leading primary care school in the nation. Because of this, many students are applying for admission but there is not enough space for all of them. Eligible students, including Washington residents, are turned away. He hopes that a satellite school is established in Spokane so more Washington residents may attend. He also mentioned a new Florida law that has eliminated immunity from liability for physician peer review. This has resulted in the elimination of physician peer review in Florida. He hopes the example set by Florida does not spread to other states.

Member Osaki mentioned that the Board's *Community Environmental Health Assessment* report, which is available on the Board's Web site, has been receiving national attention.

Chair Locke said he wished to underscore Member Gray's concerns about repeating mistakes regarding influenza vaccine. He feels CDC policy on influenza vaccine use is something that needs to be challenged and that health officers in Washington State are challenging the CDC guidelines. He reported that adding cystic fibrosis to the list of newborn screening requirements is being considered. Formation of a stakeholder group is moving forward. The group will consider this issue in June or July and bring a report back to the Board. Next week he will be attending a cross borders conference on pandemic influenza in Vancouver, BC on the Board's behalf. Secretary Selecky will be a keynote speaker. Member Crump asked whether other issues would be discussed at the cross borders conference. Chair Locke said that this conference will focus on pandemic influenza, but future conferences will likely address other issues.

DEPARTMENT OF ECOLOGY'S WASTEWATER TREATMENT PERMIT PROGRAM

Member Osaki introduced John Stormon, a hydrogeologist with the Department of Ecology's Wastewater Treatment Program. Mr. Stormon gave a presentation on water quality protection law and DOE's program for permitting wastewater treatment plants (see the presentation behind Tab 7). Secretary Selecky asked how many communities have combined sewage overflow systems (CSOs). Mr. Stormon said that there are currently eleven. Member Crump asked what size cities have CSOs. Mr. Stormon listed the cities and said that they are older cities that many years ago were the first to install some type of wastewater collection facility. Member Osaki asked if state law requires reporting of sewer spills to local health. Mr. Stormon said there is no statewide requirement to report sewer spills to local health, but most do anyway. Member Osaki asked Mr. Stormon how many municipal treatment facilities discharge to Hood Canal. Chair Locke asked Frank Meriwether, Department of Health, to come up from the audience and join the conversation. Mr. Meriwether said that Alderbrook and Port Gamble each have a sewage treatment plant that discharges directly to Hood Canal.

Keith Higman, WSBOH Member, asked Mr. Stormon about the five-year permit and how DOE addresses concerns that develop during the permit period. Mr. Stormon explained that DOE considers daily load discharges from a treatment plant and total maximum daily load (TMDL) from all contributors to that water body to determine what a water body can absorb and yet still maintain water quality standards. Member Higman asked about point sources. Mr. Stormon said that DOE's wastewater program does not require permits for most point sources. Member Shelton asked whether permit standards reflect sensitive water bodies and expressed concerns about poorly flushed areas. Mr. Stormon commented that both technology standards and water quality standards are considered for permitting criteria. There are not "one size fits all" criteria. Member Crump said the slideshow helped him understand the issues. He asked how DOE determines long-term outlook for substandard treatment plants. Mr. Stormon said that the requirements for upgrading are not clearly established. There is flexibility, and economic considerations are among the factors weighed.

Member Tonasket asked about the use of spray fields for disposing of water from wastewater treatment plants. Mr. Stormon explained that disposal of treated wastewater by spraying is allowed for application on certain crops at certain rates to assure uptake of nutrients to protect ground water. Board Member Bill White (temporarily sitting in for Secretary Selecky) asked if municipal treatment plants reduce nitrate in discharges. Mr. Stormon said that both nitrogen and phosphorus are a concern in certain surface waters and treatment technology is available to reduce the concentration in sewage discharges. Mr. Meriwether commented that the law requires sewage system operators to notify the DOH Shellfish Program and DOE whenever there is a sewage spill to marine waters. Chair Locke commented that the slideshow helped show that both onsite discharges and sewage treatment plant discharges are important considerations for public health.

LEGISLATIVE UPDATE

Mr. McLaughlin reviewed the status of active bills on which the Board has taken a position or helped amend (see memo). Mr. McLaughlin also explained that the Board's budget would essentially remain at current levels. Member Crump asked about the status of the tobacco bills. Mr. McLaughlin said most tobacco bills were dead but a tobacco-sampling bill was still alive.

DISCUSSION OF DRAFT BYLAWS

Mr. McLaughlin explained the process of creating bylaws. He called the Board's attention to the contents behind Tab 9 and briefly walked members through the draft bylaws. Member Tonasket asked about the duties of the Board officers. He wondered if the Board chair should approve and sign all correspondence—both official and legislative. Member Tonasket also commented on who could call an ad hoc sub-committee meeting and wondered if this should be the exclusive purview of the sub-committee chair. Member Tonasket commented on the need for closed personnel sessions despite the fact that Board meetings are all open to the public. He noted that at times there might be a conflict between Robert's Rules of Order and the language of the bylaws especially in regard to the issue of quorums. Member Tonasket also requested the term "Board Representative" be clarified on page 4 of the bylaws. Member Tonasket reminded the Board that Robert's Rules of Order could be used to delay business. Member Crump requested that there be clarification around meeting interruptions by outside groups or persons. Mr. McLaughlin agreed to consider all comments and to edit the bylaws accordingly.

UPDATE ON NEWBORN HEARING LOSS SCREENING

Chair Locke noted that the Board has statutory authority to require newborn screening tests in Washington State. It will likely add more conditions in the future. Newborn hearing screening is currently voluntary. The focus of today's presentation is to explore whether voluntary newborn hearing screening is achieving the same results as mandatory screening. He introduced Tara Wolff, WSBOH Policy Analyst. Ms. Wolff directed the Board to the materials behind Tab 10 and introduced Mike Glass, Director, Department of Health Office of Newborn Screening, who discussed efforts to screen newborns for hearing loss ties to the newborn screening program.

Mr. Glass informed the Board that infants could be screened for hearing loss shortly after birth. He noted that communication is an essential function in today's society and techniques of communication are formed in the infant's brain very early on, which is why it is essential to screen newborns as soon after birth as possible. Mr. Glass introduced Catie Beattie, a Department of Health audiologist. Ms. Beattie presented a slideshow on universal newborn hearing screening in Washington State, which included reported screening rates in Washington, partnerships and collaborative efforts, status of DOH's system for monitoring, and ongoing issues. (See slideshow and report on universal newborn hearing screening for more information.)

Member Osaki asked if the data provided in the slideshow applied to home births. Ms. Beattie said the data applied only to hospital births. About 1,200 births per year occur outside of hospitals. Chair Locke thanked the panel and noted that he has been closely following this issue. He said the progress of the program is impressive; however, funding is fragile, which means progress could be lost. Member Shelton asked how the program is funded and wondered if insurance companies cover costs. Ms. Beattie said the program is federally funded. Newborn hearing screening is covered by parents, insurance, or by the hospital itself. Member Osaki wondered what the screening tests involve. Ms. Beattie said there were several tests that hospitals use—one example is a probe that measures the ear's ability to respond to sound. This test is not painful to the infant. Member Osaki noted that the progress of this program is impressive and should be applauded.

Member Tonasket asked if DOH is coordinating with DSHS. Ms. Beattie said DOH does coordinate with DSHS. Member Tonasket asked if all hospitals are participating in the program. Ms. Beattie said there are 68 birthing hospitals in Washington and 67 of them provide universal newborn hearing screening programs; however, not all of the 67 hospitals are sending DOH results. DOH is currently receiving newborn hearing screening results voluntarily from more than 40 of the 67 hospital-based programs. Member Tonasket asked if there are services available for newborns identified as having hearing loss. Ms. Beattie said there is work being done within DOH to develop county resources and guides for people to turn to. It is an ongoing process. DOH does not know how many newborns are identified as needing services because not all hospitals report results. One to three babies have hearing loss per 1,000 babies born in the United States. Member Tonasket said he appreciated an update on the program and wanted continued updates.

Member Crump wondered if there is enough time to screen babies for hearing loss given their short stay in the hospital. He also wondered why two hospitals were not participating. Ms. Beattie said at the end of 2004, two hospitals did not have newborn screening programs. But since 2004, one hospital has begun screening and the other hospital relies on providers in the community to test for hearing loss. Member Crump asked why a future rule change might be necessary. Ms. Beattie said not enough work has been done to determine whether rule change is necessary and that additional work is needed. Member Crump wondered why a care provider would refuse to share information with a child's parents. Ms. Beattie said it is unclear why providers refuse and that more research is needed in this area.

Motion: The Board Chair is to request a briefing from the Secretary of Health on the progress and status of universal newborn hearing loss services when new information becomes available.

Motion/Second: Osaki/Crump
Approved unanimously

PUBLIC TESTIMONY ON ISSUES OTHER THAN HIV/AIDS RULES

No public testimony was given.

The Board recessed for lunch at 12:18 p.m. and reconvened at 1:35 p.m.

CHAPTER 246-100 AND -101 WAC, HIV/AIDS HEARING

Chair Locke noted that the HIV/AIDS rules have been a topic of discussion for many years. He introduced Mr. McLaughlin who oriented the Board to the materials behind Tab 12. Mr. McLaughlin noted that full copies of public comments characterized in the matrix behind Tab 12 were available to the Board on the back table. He introduced John Peppert and Jack Jourden, Department of Health. Mr. Jourden and Mr. Peppert presented a presentation on the HIV rule proposal, which included a review of the January 2005 presentation to the Board, responses to issues raised at the March 2005 Board meeting, and a summary of comments received since filing the CR-102 (see presentation for more information.). Mr. Peppert reviewed the matrix of comments on the rule revision and DOH responses.

Member Osaki asked whether the drivers behind the rule change were the CDC initiative and reports and whether he was correct that the rules were aimed primarily at providers. Mr. Peppert and Mr. Jourden agreed.

Member Crump asked for more information about why the rule allowed for action based on “suggestive” laboratory evidence. Chair Locke said that for notifiable conditions and infectious diseases there are suspected cases and confirmed cases. Sometimes you must act at the suspected case level because a high percentage will turn out to be confirmed cases.

Member Gray said he liked the proposed language but wondered if there would be a fiscal impact to local health jurisdictions. Mr. Peppert said there are state omnibus funds and CDC prevention dollars that help fund these activities.

Chair Locke opened the meeting to public testimony.

Public Testimony

Dr. Ron Morris, Washington State Medical Association, would like to reduce the barriers to HIV testing. Supports the rule revision.

Dr. Thomas Hooten, GACHA/Harborview HIV/AIDS Clinic, has concerns about the forms used for testing and would like to see them simplified. Also has concerns about barriers to HIV testing.

Sally Clark, Director of Community Resources, Lifelong AIDS Alliance, appreciates Board staff and members’ efforts. Supports the rule revision but would like the language clarified in some sections (see letter).

Kelly Scott, has concerns about the definition of active investigation and would like the language clarified. Would like to rescind or delay language allowing the keeping of records for partner notification for 90 days.

Dr. Ward Hinds, Snohomish Health District/WSALPHO/AIDSNet, would like changes in the WAC language to reflect where the state is currently. Has concerns about barriers to HIV testing. Supports the rule revision.

Chair Locke thanked everyone who testified and officially closed public testimony.

Member Crump asked about the “as appropriate” language for discussing anonymous testing. Chair Locke said providers need to use their discretionary judgment to figure out which situations should be anonymous and which should be confidential.

Secretary Selecky noted that today’s approach focuses on lowering barriers and increasing testing, which is different from the approach taken in the late 1980s.

Member Gray asked about the question of criminal prosecution that was brought up by Mr. Kelly Scott and wondered if patient/doctor confidentiality would stay in place. Chair Locke acknowledged that in the state statutes, health officers are required to wear different hats and can run into conflict, but not in the realm of partner notification. Melissa Burke-Cain, Office of the Attorney General, agreed with Chair Locke and noted that the questions about patient/doctor privilege and self-incrimination would come down to specific facts of a case and a blanket answer cannot be given.

Member Osaki asked whether, once the rule goes into effect, there will be challenges associated with rule implementation such as forms, procedures, and training that will take time to implement. Mr. Jourden said that they are anticipating an instruction/implementation plan that will be developed and sent to providers. Local health jurisdictions will be notified of changes. Mr. Peppert agreed that it would take time. Member Osaki he would like to amend to the motion to state that a report from DOH would be given to the Board one year after adoption. Secretary Selecky said the report should focus on what differences have resulted from the rule change.

Chair Locke noted that this is a high priority issue of his and he respects the diversity of opinion. He appreciates DOH's work on this rule.

Secretary Selecky noted that Mr. Peppert has been a force in balancing public health, clinical, and advocacy work. She is proud that Mr. Peppert works for DOH. She also thanked Mr. Jourden and Ms. Davis for their guidance.

Motion: The Board adopts the revisions to Chapters 246-100 and 246-101 WAC as published in WSR 05-06-12 except it shall be amended as follows:

- ***Add “explicitly” after “information,” and before “provide” in proposed sub-subsection 246-100-207(1)(b).***
- ***Insert “explicit” before “verbal or written” and delete “specific” before “consent in proposed sub-subsection 246-100-207(1)(c).***
- ***Fix incorrect references and minor drafting errors in proposed sections 203 and 206. One year from the effect date of the rule, the Department of Health should report back on the implementation of the rule and its impacts.***

Motion/Second: Crump/Gray

Approved unanimously

ADJOURNMENT

Chair Locke adjourned the meeting at 3:06 p.m.

WASHINGTON STATE BOARD OF HEALTH



Thomas Locke M.D., Chair